

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 236 OF 1993

Laxman Deoram Hire, since
deceased through his legal heirs
Waman Laxman Hire & Ors. ..Petitioners

versus

Shivaji Shankar Bargal, since
deceased by his heirs
Amarjeet Shivaji Bargal & Ors. ..Respondents

Mr. P. N. Joshi for the Petitioners.

Mr. S. G. Karandikar for the Respondents No.2.

CORAM : D. G. DESHPANDE, J.

DATE : 20TH SEPTEMBER, 2006

ORAL ORDER. :

1. Heard Advocate for the Petitioners and
the Respondent No.2.

2. Petitioner is a tenant and the respondent is
the landlord. The tenant was declared as a deemed
tenant and also declared to be entitled to purchase.
This order was upheld in Appeal. Landlord's appeal
was also dismissed. In Revision, before the

Maharashtra Revenue Tribunal, MRT held that since this was a Vatan land, the petitioner was not entitled to purchase the land, and therefore the MRT set aside all the orders of the courts below.

3. Advocate for the Petitioners has relied upon the judgment of this Court reported in **2004(4) All MR 20 Shri Pradeeprao @ Virgonda Shivgonda Patil vs. Shri Sidappa Girappa Hemgire (deceased) & Anr.** According to him the point involved is squarely covered by this judgment and therefore the order of the MRT has to be set aside. The relevant paragraphs 5 to 8 of this judgment are reproduced hereinbelow:

"5. Having considered the rival contentions, to my mind, there is no substance in any of the aforesaid contentions raised on behalf of the petitioner. I shall presently advert to the first contention that, in absence of a formal order of re-grant issued by the authorities in favour of the landlord or in favour of the tenant, provisions of Section 32-G were unavailable. This submission clearly overlooks the provisions of Section 5 of the Abolition Act, which is applicable to the fact situation of the present case. Section 5 of the Act reads thus :

"5. Regrant of Watan land to Watandar:- (1) Watan land resumed under Section 3 shall, on an

application therefor (in cases not falling under sections 6 and 9), be regranted to the Watandar of the Watan to which it appertained, on payment by or on behalf of the Watandar to the State Government of the occupancy price equal to twelve times the amount of the full assessment of such land, within the prescribed period and the prescribed manner; and the Watandar shall thereupon be an occupant within the meaning of relevant Code in respect of any such land, and shall be primarily liable to pay land revenue to the State Government in accordance with the provisions of that Code and rules relating to unalienated land shall, subject to the provisions of this Act, apply to such land;

Provided that, in respect of any Watan land, which was not assigned under the existing Watan law as remuneration of an officiator, occupancy price equal to six times the amount of the full assessment of such land shall be paid by or on behalf of the Watandar for the re-grant of such land.

(2) If there be failure to pay the occupancy price under sub-section(1), within the prescribed period and in the prescribed manner, the Watandar shall be deemed to be unauthorisedly occupying the land, and shall be liable to be summarily evicted therefrom by the Collector in accordance with the provisions of the relevant Code.

(3) The occupancy of the land regranted under sub-section (1) shall not be transferable or partible by metes and bounds, without the previous sanction of the Collector and except on payment of a sum equal to twenty times the amount of the full assessment of the land, where it is held and used for the purpose of the agriculture, and

in any other case a sum equal to fifty per cent of the market value of the land.

Provided that, where the occupancy of any land held and used for the purpose of agriculture is made transferable or partible, and such land is subsequently used for any purpose other than agriculture, the holder thereof shall be liable to pay to the Collector the difference between the sum equal to fifty per cent of the then market value of the land and the sum already paid."

6. Besides the above provisions, it will be opposite to advert to Rule 3 of the Maharashtra Revenue Patels (Abolition of Offices) Rules, 1963 framed under the provisions of the Abolition Act. Rule 3 prescribes the period for payment of occupancy price to be paid under Section 5(1) of the Act. The same reads thus :-

"Period for payment of occupancy price under Section 5(1) :- The period for the payment of the occupancy price under sub-section (1) of Section 5 or Section 6 shall be (up to and inclusive of the 31st day of July, 1969):

Provided that, where a representative Watandar produces a certificate from the Collector to the effect that an application for compensation under Section 12 made by him, disclosing a prima facie valid claim for compensation, is pending, then such occupancy price may be paid within one month from the date of the decision of the application, if no compensation is awarded or the date on which compensation awarded is paid to the Watandar."

7. On conjoint reading of the above provisions, I have no hesitation in taking the view that as soon as the landlord deposits the amount towards occupancy price within the prescribed period under the above mentioned rules, there is an automatic regant of watan land by virtue of Section 5

of the Act. This is on account of the plenitude of Section 5 which provides that watan land resumed under section 3 "shall" be regranted to Watandar of the watan lands "on payment on behalf of the Watandar to the State Government of the occupancy price within the prescribed period". This view is reinforced by the dictum of our High Court in the case of **Prabhakar G. Bhapare Vs Hari Narayan, (1969) Vol.XVI- No.6 Tenancy Law Reporter 90.** It is held within that the Petitioner having paid the occupancy price to the Government and on the happening of that event, the Petitioner became the owner of the land. It is further held that what is important is whether the occupancy price is paid and not when it has been paid. It is trite to reproduce the exposition in the said decision, which reads thus:

"It is true that under the proviso to sub-sec.(1) of S.88-C an application for an exemption certificate cannot lie at the instance of a permanent tenant. The Petitioner, however, is no longer a permanent tenant, because his name has been entered in the revenue records, on the abolition of the Inam, as an occupant or a Kabjedar. It is also clear that The Petitioner has paid the occupancy price to the Government and on the happening of the event the Petitioner has become an owner of the land. I am unable to appreciate that no retrospective recognition can be given to the payment of occupancy price. What is important whether the occupancy price is paid and not, when it has been paid." (emphasis supplied)

This observation is obviously in the context of the principles underlying Section 5 of the Abolition Act as is referred to above.

8. Suffice it to observe that in the present case, undisputedly, the landlord has himself paid the occupancy price in respect of the suit land on 30th December, 1965 within the specified time. On happening of that event, the landlord being Watandar, by

operation of law, the watan land stood regranted in his favour on and from that date itself. Inasmuch as, on payment of the occupancy price by or on behalf of the Watandar in the prescribed period, the tenure is deemed to have been converted into Rayatwari tenure on the same date. Accordingly, I have no hesitation in upholding the view taken by the courts below that in the fact situation of the present case, issuance of the order of regrant of land would only be an administration or ministerial formality. For, the regrant takes effect immediately on payment of the occupancy price by or on behalf of the Watandar to the State Government within the prescribed period by virtue of Section 5 of the Abolition Act. Indeed, reliance was placed by the Petitioner on the recent decision of our High Court in the case of **Rangnath** (Supra). However, that was a case where the admitted position was that the landlord had not paid the occupancy price for regrant within the stipulated period, and that the amount was paid by the tenant directly. In other words, the purported payment of the occupancy price was not by or on behalf of the Watandar as such and moreso covered or protected by Section 5 of the Abolition Act. This position is clear from the facts of that case narrated in paragraph 6 of the said decision. Obviously, therefore, the Court has proceeded to examine the matter in that perspective and found in paragraphs 12 and 13 that unless the land is regranted, after resumption, it would not be possible to invoke the provisions of the Tenancy Act. Understood thus, I find no substance in the argument as canvassed by the Petitioner that in absence of a formal order of regrant, the land still continued to vest in the State Government and for which reason proceedings under Section 32-G of the Tenancy Act were premature, having regard to the fact situation of the present case.

The aforesaid observations of this court in the

judgment, are directly applicable to the present case. The Order of the MRT cannot be sustained and therefore the Petition is allowed. Rule is made absolute. Impugned order of the MRT is set aside. No order as to costs.

(D.G. DESHPANDE, J.)